



Model "First Point of Contact" Letter for Use with *De Minimis* Parties

United States Environmental Protection Agency
Region []
[Address]

Re: [Site Name, Address or Location of Site]

Dear Sir or Madam:

The United States Environmental Protection Agency (EPA) is currently working to clean up the [name] facility, which is a Superfund site located in [county, state]. Superfund is a federal program administered by EPA that is designed to clean up hazardous substances ("waste") that may pose a threat to human health or the environment. (The full name of the Superfund law is the Comprehensive Environmental Response, Compensation, and Liability Act, or "CERCLA.") Attached is a fact sheet with further information about the site and EPA's efforts to date. **[Attach a site fact sheet and any available remedy selection information.]**

EPA is sending this information to you because you are potentially responsible for (contributing or transporting) a small amount of the waste to the site. EPA has based this determination on **[list sources of information utilized]**. **[Include attachments if appropriate.]**

Under the Superfund program, EPA has the authority to take actions at sites such as the [name of site] site to protect public health, welfare, and the environment. In addition, this law permits EPA to request that parties who are responsible for the waste pay to clean up the site.

Potentially Responsible Parties

Those parties who may be responsible for the waste at sites are referred to as "potentially responsible parties" or Superfund "PRPs." PRPs include individuals, businesses, governmental agencies, and other types of organizations. You may be a PRP if you are:

1. a current owner or operator of the site;
2. a former owner or operator of the site during the period of waste disposal;
3. a party that arranged for the treatment, disposal, or transportation of hazardous substances to the site; or
4. a party that transported hazardous substances to a site you selected.

“De Minimis” Settlements

Because EPA believes you may have contributed only a small amount of waste in comparison to the total amount of waste at the site, you may be considered a “*de minimis*” PRP. Under Superfund, EPA may offer special settlements to *de minimis* PRPs, which provide many benefits to settling parties. Through a *de minimis* settlement, you receive:

1. **“Covenant Not to Sue”** – This provision is a promise that the EPA will not bring any future legal actions against you regarding the site and the specific matters named.
2. **“Contribution Protection”** – This provision offers you protection from being sued in a contribution action by other PRPs at the site. Frequently, major waste contributors will sue many small waste contributors in contribution under Section 113(f) of CERCLA to recover cleanup costs. A *de minimis* settlement provides protection from such contribution suits that extends to all matters covered by the settlement. (You should note, though, that a settlement may not be able to protect you from all future claims by other PRPs. A recent Supreme Court case has held that in certain situations, a PRP who has incurred cleanup costs at a site can sue other PRPs under CERCLA Section 107(a)(4)(B). These claims may not be barred by the contribution protection provided by a settlement.)

The amount a *de minimis* settlor may pay as part of the settlement varies from site to site. In general, the payment amount is the sum of a basic payment and a premium payment. The basic payment is calculated from the estimated cost to clean up the site and the amount of the *de minimis* party’s waste (as a percentage of the total waste at the site). The premium payment varies according to a variety of factors specific to both the site and the settlement. See the enclosed brochure entitled “Superfund and Small Waste Contributors” for more information. [Enclose brochure.]

Taken together, contribution protection, the covenant not to sue, and other *de minimis* settlement terms can provide you with the most certainty that EPA can offer that your responsibilities to EPA at a site are fulfilled, and that you are protected from future contribution actions related to the matters addressed in the settlement. To date over 30,000 individuals, small businesses, and others have entered into over 580 *de minimis* settlements with EPA to address their Superfund liability at more than 269 sites across the country.

Information to Assist Potentially Responsible Parties

EPA encourages good faith negotiations between PRPs and EPA, as well as among PRPs. To assist in this effort, we have attached a list of the names and addresses of individuals who have received this letter, or previous letters, because they are potentially responsible for cleaning up the waste at the [name of site] Site. It may be useful to talk to or meet with other *de minimis* parties at the site before talking to EPA or to other non- *de minimis* PRPs. **[In the attachment, note which PRPs are *de minimis* to facilitate the formation of a *de minimis* group.]** It is important to note that this list is preliminary; it is not a final determination of the parties that may be responsible for the cost of cleaning up the site. EPA may modify this list of PRPs at any time.

[A Region should also attach the following, if available.] To the extent such information is available, EPA has also enclosed a list of the volume of the waste materials contributed by each party. Note that this list is also preliminary, and does not constitute a final determination of contribution or liability.]

[A Region may incorporate this section where the use of ADR is either being contemplated or is already underway at this site.]

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is a collection of methods commonly used to resolve legal disputes out of court. ADR normally involves the use of a neutral third party who is skilled in a variety of ADR approaches to increase the effectiveness of settlement discussions.

Due to **[the particular circumstances of the case: e.g., large number of parties, history of unsuccessful negotiations, short timeframe, etc.]**, EPA believes that the services of a facilitator may be useful in this matter. A meeting is planned for **[date, time]** at **[location]** which will provide an opportunity for you to explore settlement options with other *de minimis* and non- *de minimis* PRPs. We hope you will attend.

To help you explore ADR options, we have asked **[name of facilitator/mediator]**, a neutral professional from **[name of ADR firm]** (a national provider of alternative dispute resolution services) to be present at this meeting. **[Name of facilitator/mediator]** will be available to discuss ADR options and meet with you at your request. If you have questions about the use of ADR in this matter that you would like to ask prior to this scheduled meeting, you may reach **[him; her]** at **[phone]**. **[The EPA ADR liaison at Headquarters, David Batson, will help identify an appropriate neutral professional to reference in this letter.]**

Information about the Site

EPA encourages you to become familiar with the site. To assist you in this effort, EPA has compiled certain key documents about the site. Copies of these documents are located at [EPA Regional Office] and **[location on/near site]**, and are **[will be]** available to the public for inspection and comment.

[In closing, include a contact name and phone number for further information, as well as information about whatever next steps are appropriate, e.g., upcoming meeting, date for participating in negotiations, etc.]

A *de minimis* settlement may be in your best interest. EPA encourages you to read carefully the enclosed fact sheet about the site and about *de minimis* settlements. [Please contact EPA by **[date]** to indicate your interest in participating in future negotiations at this site. You may respond individually or through a group or committee, if such a group has been formed.] If you have any questions concerning this letter, please contact (or direct your attorney to contact) **[name of regional attorney]**.